IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 447 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

WORKMEN OF ST CORPORATION

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 21/01/99

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner as well as Mr. Rathod who has appeared for the caveator respondent No.1 representing the four workmen, namely, Mukesh Karsanbhai Vora, Tarun Kumar J. Acharya, Dinesh D. Vaaghela and Bakul G. Maru.

2. The petition is against the award of the

Industrial Tribunal, Gujarat, Rajkot dated 5.6.98. A reference was made to the Tribunal at the instance of respondents whether the four workmen out of whom except DD Vaghela are working on the establishment of the petitioner for more than five years and all the four workmen have completed 240 days service in the calendar year, in these circumstances, whether they are entitled to be made permanent and other benefits attached to such status? Out of the four workmen, two workmen, namely, TJ Acharya and MK Vora have worked as wireman whereas DD Vaghela and BG Mearu have worked as helper wiremen. The order of reference also speaks that these workmen are qualified for the post. The petitioner-employer had contested the claim of the workmen to regularisation inter alia on the ground that there are no posts and there is no permanent nature of work available, and the concerned workmen are appointed only casually to discharge casual duties.

3. On enquiry considering the material before it, the Tribunal found that looking to the needs of the establishment there is permanent requirement of atleast five persons to work as wiremen. Against such requirement only two persons were working permanently out of whom also one B.M.Nakun died in July 1996. Thus finding that existence of permanent nature of work on the establishment for five persons to discharge the duties of wireman against need of five and that all the workmen are qualified workmen, and are working for long periods, Mr. MK Vora since 1.1.1986, Mr. TJ Acharya since March 1987, Mr. DD Vaghela since 1990 and Mr. BG Mearu since May 1987, and that the other workmen of the petitioner have been granted benefit of permanency and regular payment in the time scale of pay under different settlements not governing this class of workmen, the Tribunal has ordered that TJ Acharya and MK Vora be regularised on permanent posts as wireman with effect from 1.1.1996 and the other two workmen, namely, DD Vaghela and BG Mearu be regularised and made permanent as helper wireman with effect from 1.1.1996 with consequential reliefs flowing from status of permanency, namely, fixing in the permanent pay scale and appended benefits thereto.

4. Learned counsel appearing for the petitioners has argued that the Tribunal has not taken into consideration the resolution of the Board of Directors of the petitioner Corporation dated 27th June 1991 laying down the criterion for regularisation of casual workmen, which inter alia directs regularisation of skilled workmen on completion of ten years of continuous service and different period have been prescribed for regularisation

in the category of semiskilled and unskilled daily rated workmen. It has been also argued that regularisation in the present circumstances would mean back door entry to these four workmen in violation of Article 16 of the Constitution of India.

5. Mr. Rathod for the respondent urges that petitioner had never placed on record or pleaded for giving effect to the resolution of the Corporation now sought to be pressed into service and therefore this new plea ought not to be entertained at this stage which is founded on a material which was not before the Tribunal. He also urged that the order is otherwise just. The Tribunal has found the existence of permanent nature of the work, the number of persons required in the establishment, the number of persons already employed permanently against the existence of such work, and keeping in view all these the Tribunal has passed a just order which ought not to be interfered in exercise of extraordinary jurisdiction. He also urged that continuing a person for long duration without granting a permanent status in the service notwithstanding existence of permanent nature of work amount to unfair labour practice and which needs interference by the Tribunal under the provisions of the Industrial Disputes Act, therefore, the petition be dismissed.

6. Having given anxious and thoughtful consideration to the contentions raised before me, I am of the opinion that the petition must fail.

First to examine the question of alleged back door entry.

7. A dispute relating to the term of employment or relating to the conditions of employment of any person is industrial dispute which can be made subject matter of reference to the Labour Court or Industrial Tribunal as the case may be for adjudication. While considering such dispute, Labour Court or Industrial Tribunal have necessary jurisdiction to examine whether the dispute arose out of any unfair labour practice by the employer, giving cause for the dispute, if so, it has also jurisdiction to remedy. Unfair labour practice as been defined in Section 2(ra) means any practice specified in the 5th Schedule. The 5th Schedule of the Industrial Dispute Act enumerates various practices which are termed as unfair labour practice. In such enumeration at item 10 we find that to employ as workmen, badlis casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to an unfair labour

practice. The unfair labour practice in its very expression has germs of arbitrariness and unreasonableness in its practice and such practice of unfair labour practice must be held to be violative of Article 14 which guarantees to every citizen of this land equal protection of law. Article 14 is a genus of this basic fundamental right and the other articles providing specific protection against specific inequalities are but specie of Article 14. Ordinarily, there is no conflict of operation of different articles and if one is violative of Article 14 unless it is directed by some other provision of the Constitution, the same continues to be the violative of constitutional provisions. Therefore the question whether regularisation as such results in back door entry to the service denying equal opportunity to the citizens and results in violation of Article 16 does not brook any answer in abstract.

8. In the case of persons, who had already entered the service and have continued there for long for one reason or another, for some reason beyond their control and their claim to permanency can be considered in the light of statutory provisions made for the benefit of weaker section of society to combat against existing inequalities and to curb tendencies of exploitation and there is no question about constitutional validity of such provisions, the question has to be examined in that light. Neither there can be an automatic claim to regularisation nor an automatic rejection to such claim. When a dispute is raised under Industrial Disputes Act about terms and conditions of service, on the ground of remedying evil of continued employment on casual or temporary basis, not providing job security as well as results in payment of wages to such temporary hands much less than what is paid to regular or permanent hands, the question invites to be examined in the light of statutory provisions aimed to curb unfair labour practice and to provide a fair deal to such workmen in consonance with constitutional guarantees of equality and right to life, which include right to livelihood with dignity. To curb the tendency of unfair conditions of labour, to cut across the unreasonableness inherent in long continuance as temporary employee, notwithstanding existence of permanent work resulting in discriminatory treatment in the matter of providing terms of condition for discharging permanent nature of work of the same kind between regular employees and those recruited as temporary ad hoc or casual the courts intervened to enthuse a vibrant life to the meaning of right to life and personal liberty by alleviating from mere right to survival or animal existence to be right to life be

composed of all aspects which makes a man's life meaningful and worth living by giving expansive meaning to Article 14 and 21.

9. Fair amount of light comes from the Apex Court. There has been a series of decisions of the Supreme Court deprecating the position where continuation of casuals for long years and issuing directions for regularisation of such person to remedy inequalities arising amongst the class of persons serving the State. At the same time, the court has also been conscious of the fact that indiscriminate regularisation results in harbouring tendencies of back door entries to service where the Constitution declares it to be fundamental right of citizen to have equality of opportunity to employment under the State.

10. The Apex Court in Dhirendra Chamoli and anr. v. State of U.P. rejecting the argument that casual workman of long duration cannot be paid regular wages for want of sanctioned post said:

> "It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the expliciting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal to pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV

> employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees"

and expressed desire that the posts will be sanctioned and employees be regularised.

11. The court again lamented in Surinder Singh and Anr. v. Engineer in Chief CPWD and Ors. (1986) 1 SCC 639 that many employees are kept in service on a temporary daily wages without their service being regularised and expressed hope that government will take appropriate action to regularise the services of all those who have been in continuous service for more than six months.

12. In Daily R.C. labour P&T v. Union of India 1987 SC 2342 while reiterating the principle enunciated in Dhirendra Chamoli's case (supra) warned with a note of caution against this form of exploitation and unfair labour practice in no uncertain terms.

> "It is again for this reason that managements and the Governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. Where is any justification to keep persons as casual labourers for years as is being done in the Postal and Telegraphs Department? Then it amounts to exploitation of labour. ..... It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department."

13. In Randhir Singh v. Board of School Education Haryana & Anr. (1989) Supp (2) 301, the apex court directed the appellants, who have been employed as casual workers, although they were admittedly discharging duties of clerks in the office to be regularised with effect from they joined initially, with advantage of continuous service but without actual monetary benefits.

14. The matter again came up before Supreme Court in State of Haryana and others etc. etc. v. Piara Singh and others etc. etc. AIR 1992 SC 2130. The court after taking note of the decision in Delhi Administration case (supra) emphasised the need to strike balance between the two competing inequalities vying for relief.

15. Considering the case of regularisation, the court observed:

> "The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation."

16. The Court further went on to say while emphasising that normal rule be regular recruitment through prescribed agencies and where ad hoc temporary appointment is necessitated, same many not be continued indefinitely, care must be taken to see that adhoc employees are replaced as early as possible by regular recruitment and that one ad hoc employee be not replaced by another one:

> "If for any reason, an ad hoc or temporary employee is continued for fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the

State."

17. About the norms for regularisation the Court said:

"So far as the work charged employees and casual labour are concerned, the effect must be to regularise them as far as possible and subject to their fulfilling the qualifications, if any prescribed for the post and subject to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need of his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job."

18. In this connection the decision of the Supreme Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Others AIR 1992 SC 789 needs be noticed. The case arose in the context of persons employed under Jawahar Rojgar Yojana by the Delhi Administration. As employment under the Jawahar Rojgar Yojana continued for quite some time, a large number of petitions were filed laying claim to regularisation of permanent posts banking upon Article 21 of the Constitution. Viewing the circumstances in the context of that case, the Court observed:

"Viewed in the context of the facts of the present case it is apparent that the schemes under which the petitioners were given employment have been evolved to provide income for those who are below the poverty line and particularly during the period when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor - much less to the unemployed in general."

19. It is in the background of this scheme under

which the employment was offered, the court drew attention to certain malpractices that may result in surplus labour being engaged under the State organisation. The court observed:

> "We may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. ..... The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years."

20. However, the court did not in terms state that in no circumstances, the regularisation can be made or in all circumstances regularisation of employees who have been continued on posts for long in the face of existing need on the permanent basis cannot be made in any circumstance being violative of Article 16.

21. The matter directly arose before the Supreme Court in the context of provisions under the Industrial Disputes Act relating to unfair labour practice connected with continued long employment as casual or temporary hand. The claim of workmen to permanent status on the ground that their continued temporary status amounts to unfair labour practice was sought to be contested on the ground that mere allegation of continuance for long as casual for years is not sufficient to describe the same as unfair labour practice, until it is shown by the workmen that such continuance is coupled with object to deny the benefits of permanent status to the concerned workmen. The plea was negatived by saying:

> "We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, interalia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the

second part of the item, if badlis, casual or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casual for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object. ..... Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required."

22. The court distinguishing the decision in Delhi administration case (supra) on the ground that it dealt with a scheme not with an object to provide employment at all but only to provide income to those who are below poverty line, temporarily, approved and adhered to principle enunciated in State of Gujarat v. Piarasingh and said:

"What was stated in the aforesaid case (Delhi Development Horticulture Employee's Union v. Delhi Administration) cannot be called in aid at all by the appellants. According to us, the case is more akin to that of State of Haryana v. Piara Singh (1992) 4 SCC 118 in which this Court favoured the State Scheme for regularisation of casual labourers who continued for a fairly long spell - say two or three years."

23. With these premises, I have no hesitation in overruling the contention raised on behalf of the petitioner to resist regularisation on that ground.

24. As has been stated by the Supreme Court in the aforesaid referred decisions where persons are shown to have been employed temporarily for long duration and it has also been shown that there exists permanent nature of work to employ number of persons in that event, the irresistible conclusion is that continued temporary employment in respect of some of them on the jejune ground of non availability of vacancy is nothing but an unfair labour practice to deny the payment in the regular pay scales as are available to permanent employees to get

the same work done on payment of minimum wages or lesser wages permissible to daily rated workmen for casual type or temporary type of work. Once this conclusion is reached, on the findings recorded by the Tribunal about which nothing has been said, namely, that there exists permanent nature of work for five members at least and since July 1996 only one person has been employed on permanent basis and that these persons are discharging functions of wireman or helper wireman with effect from the date referred to above in the case of each workmen, no justification can be found to interfere with the order of regularisation granting permanent status to these workmen with effect from 1.1.1996, when they have been found to be qualified to hold such positions otherwise also. The case clearly falls within the ratio laid down by the Supreme Court in Pyara Singh case (supra) as well as Chief Conservator of Forests (supra). In this connection reference may usefully be made to observation of Das Gupta,J in Jaswal Sugar Mills Ltd. vs. Badri Prasad (1961) 1 LLJ 649 (AIR 1967 SC 515) underlining the important requirement of job security of a workmen:

> "The distinction between a permanent engagement on a work of a permanent nature and a temporary workman engaged on work of a permanent nature is that a temporary workman is engaged to fill in a need of temporary hands for extra hands of permanent jobs. ... When a workman is engaged in a work of permanent nature which lasts throughout the year, it is expected that he would continue permanently unless he has been engaged to fill in a temporary need."

25. On the same principle awards of industrial tribunals directing the employer to make temporary workman permanent nature of work throughout, were upheld by the apex court in Management of Sone Valley Portland Cement Co. Ltd. v. Their Workmen and others AIR 1963 SC 495. Referring to award directing the workmen engaged temporarily for packing work to be made permanent, the Court said:

> "Turning now to the three points which have been raised before us we shall first take the contention with respect to that part of the award by which the tribunal has ordered that 50 per cent of the cement packers should be made permanent. The reasons given by the tribunal for making this order are (i) that cement packing is not work of a temporary nature but is part of the manufacturing process which goes on all the time,

> and (ii) that the figures supplied by the appellant as to the number of temporary cement packers and the work done by them in 1954 show that there was sufficient work for at least 50 per centum of them being made permanent. We agree with both the reasons given by the Tribunal and are of opinion that the order passed by it that 50 per centum of the cement packers should be made permanent is justified. We therefore reject the contention of the appellant in this behalf."

26. The principle fully supports the award under challenge, in the light of findings about nature of work and requirement of permanent hands needed coupled with qualification ofthe hands employed ostensibly temporarily to discharge that function continuously. It does not call for any interference.

27. The question may be viewed from the point yet another angle. Security of job is of great significance in labour jurisdiction. Courts have zealously looked at protecting the workmen against denial, job security by their employers by engaging them on temporary basis, though there exist permanent nature of work to engage them.

28. It may further be noticed that even according to the document now produced before this Court also suggest that even according that resolution the workmen would become eligible to be made permanent between 1996 and 1997. If that be so, there is all the more no reason to interfere with the award.

Dismissed summarily.

(Rajesh Balia, J)